

EXHIBIT E

30(b)(6) Fishman Deposition
3/12/08

30(b)(6) Abbott (Fishman, David S.)

March 12, 2008

1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE)
PRICE LITIGATION) MDL No. 1456
-----) Civil Action
This document relates to:) No. 01-12257-PBS
United States of America,)
ex. rel. Ven-a-Care of the)
Florida Keys, Inc.,) Hon. Patti Saris
vs.)
Abbott Laboratories, Inc.,) Magistrate Judge
CIVIL ACTION NO. 06-11337-PBS) Marianne Bowler

Videotaped 30(b)(6) deposition of DAVID S.
FISHMAN, called by the Plaintiffs for examination,
taken pursuant to notice, agreement and by the
provisions of the Rules of Civil Procedure for the
United States District Courts pertaining to the
taking of depositions, taken before DEBORAH HABIAN, a
Notary Public within and for the County of Cook,
State of Illinois, and a Certified Shorthand Reporter

Henderson Legal Services, Inc.

202-220-4158

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<p>2</p> <p>1 of said State, at the offices of JonesDay, 77 West 2 Wacker Drive, 35th Floor, Chicago, Illinois, on the 3 12th day of March, 2008, at 8:34 a.m. 4 5 APPEARANCES: 6 7 U.S. DEPARTMENT OF JUSTICE 8 COMMERCIAL LITIGATION, FRAUD 9 BY: ANN ST. PETER-GRIFFITH, ESQ. 10 99 N.E. 4th Street 11 Miami, Florida 33132 12 (305) 961-9001 13 on behalf of the United States; 14 15 ANDERSON, LLC 16 BY: C. JARRETT ANDERSON, ESQ. 17 208 West 14th Street, Suite 3-B 18 Austin, Texas 78701 19 (512) 469-4549 20 on behalf of the Relator, Ven-a-Care; 21 22</p>	<p>4</p> <p>1 INDEX OF EXAMINATIONS 2 3 WITNESS: DX CX RDX RCX 4 DAVID S. FISHMAN 5 EXAMINATION BY: 6 ANN ST. PETER-GRIFFITH, ESQ. 06 7 8 INDEX OF EXHIBITS PAGE 9 Exhibit Fishman 001, Sub 1 through Sub 40 10 ABT-DOJ 0394762 through 0395345 21 11 Exhibit Fishman 002, ABT-DOJ 0302503 12 Abbott Lab Ethics & Compliance Policy 147 13 Exhibit Fishman 003, Notice of Deposition 176 14 Exhibit Fishman 004, TXABT 49911 15 Proposal Analysis 260 16 Exhibit Fishman 005, TXABT 38152 17 Proposal Analysis 260 18 Exhibit Fishman 006, TXABT 38152 19 Injectable Comparison 269 20 Exhibit Fishman 007, ABT-DOJ 0233906 21 Catalog Price Adjustment 351 22</p>
<p>3</p> <p>1 APPEARANCES (continued): 2 3 JONES DAY 4 BY: TONI-ANN CITERA, ESQ. 5 77 West Wacker Drive 6 Chicago, Illinois 60601-1692 7 (312) 782-3939 8 on behalf of the Defendants. 9 10 ALSO PRESENT: 11 STEPHAN HOOG, VIDEOGRAPHER 12 HENDERSON LEGAL SERVICES 13 14 15 16 17 18 19 20 21 22</p>	<p>5</p> <p>1 THE VIDEOGRAPHER: This is Stephan Hoog of 2 Legal Video Services, Inc., 205 West Randolph Street, 3 Chicago, Illinois. I'm the operator of this camera. 4 We're on record March 12th, 2008. The time is 8:34, 5 as indicated on video screen. 6 This is the videotaped deposition of 7 David Fishman being taken on behalf of Federal Rules 8 of Civil Procedure on behalf of the Plaintiff. We are 9 at 77 West Wacker Drive, Chicago, Illinois. This case 10 is captioned In Re: Pharmaceutical Industry Inc. AWP, 11 Case No. 01-12257-PBS. 12 Will the attorneys please identify 13 themselves for the video record? 14 MS. ST. PETER-GRIFFITH: Ann St. Peter-Griffith 15 from the United States Attorney's Office, Southern 16 District of Florida on behalf of the United States. 17 MR. ANDERSON: Jarrett Anderson, counsel for 18 the lawyer. 19 MS. CITERA Toni Citera, counsel for the 20 witness and for the Defendant from JonesDay. 21 THE VIDEOGRAPHER: The court reporter today is 22 Debbie Habian. Would you please swear in the witness?</p>

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<p style="text-align: right;">258</p> <p>1 opinion about a conclusion.</p> <p>2 MS. ST. PETER-GRIFFITH: Sir --</p> <p>3 THE WITNESS: A conclusion about --</p> <p>4 MS. ST. PETER-GRIFFITH: Sir, unless she</p> <p>5 instructs you not to answer, you need to answer the</p> <p>6 question.</p> <p>7 MS. CITERA: No, that's his answer, he's not</p> <p>8 prepared to testify about that.</p> <p>9</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Why aren't you prepared to testify about</p> <p>12 that?</p> <p>13 A. Because you're asking for a conclusion.</p> <p>14 Q. Sir, what's the answer to the question?</p> <p>15 MS. CITERA: No.</p> <p>16 THE WITNESS: I'm not prepared to testify to</p> <p>17 that.</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. If Abbott provided in response to requests</p> <p>20 for proposal information concerning AWP's and spreads,</p> <p>21 would that violate the so-called practice that you</p> <p>22 described earlier?</p>	<p style="text-align: right;">260</p> <p>1 MS. ST. PETER-GRIFFITH: And this.</p> <p>2 THE REPORTER: A different one?</p> <p>3 MS. ST. PETER-GRIFFITH: Um-hum.</p> <p>4 (Exhibit Fishman 004 and</p> <p>5 Exhibit Fishman 005</p> <p>6 was marked for ID)</p> <p>7 THE REPORTER: Here you go.</p> <p>8 THE WITNESS: Which one do you want me to look</p> <p>9 at?</p> <p>10</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Why don't we start with the one that says</p> <p>13 "160" at the bottom?</p> <p>14 A. Where would it say "160" at the bottom?</p> <p>15 MS. CITERA: Here.</p> <p>16 MS. ST. PETER-GRIFFITH: Where it says --</p> <p>17 MS. CITERA: This one (indicating). This one</p> <p>18 (indicating).</p> <p>19 THE WITNESS: Oh. Oh, okay.</p> <p>20 MR. ANDERSON: Ann, why don't you state for</p> <p>21 the record what it's marked now and what it's</p> <p>22 previously been marked? Because we have testimony</p>
<p style="text-align: right;">259</p> <p>1 MS. CITERA: Same objections, also</p> <p>2 hypothetical.</p> <p>3 THE WITNESS: It's hypothetical. Depending on</p> <p>4 who -- who did it, and you're seeking a -- you're</p> <p>5 seeking a conclusion based on a set of facts under</p> <p>6 legal analysis of the code.</p> <p>7</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. Sir, do you know what a proposal analysis</p> <p>10 is?</p> <p>11 A. A proposal analysis?</p> <p>12 Q. Um-hum.</p> <p>13 A. I know what the words mean.</p> <p>14 Q. Okay, but within Abbott HPD, do you know</p> <p>15 what a proposal analysis is?</p> <p>16 MS. CITERA: Objection, outside the scope.</p> <p>17 THE WITNESS: Specifically, no.</p> <p>18 MR. ANDERSON: Don't you want to keep the top</p> <p>19 one.</p> <p>20 MS. ST. PETER-GRIFFITH: Would you mark this as</p> <p>21 the next exhibit?</p> <p>22 THE REPORTER: Sure. It's 4.</p>	<p style="text-align: right;">261</p> <p>1 from other witnesses about the prior exhibit number.</p> <p>2</p> <p>3 BY MS. ST. PETER-GRIFFITH:</p> <p>4 Q. Sir, I'm showing you -- this has been</p> <p>5 marked as Exhibit 4?</p> <p>6 A. 5.</p> <p>7 Q. 5 in your deposition. It was previously</p> <p>8 marked in the Beck deposition as Deposition Exhibit</p> <p>9 160. Do you see that at the bottom?</p> <p>10 A. I do.</p> <p>11 Q. Sir, this is a proposal analysis wherein</p> <p>12 Abbott provides -- wherein Abbott provided -- and if</p> <p>13 you could flip to the page down at the bottom where it</p> <p>14 says "38355"?</p> <p>15 A. 38355?</p> <p>16 Q. It's probably three quarters of the way</p> <p>17 through the pack.</p> <p>18 A. Yes, I've got it. 38355, yes, I have that</p> <p>19 page.</p> <p>20 Q. If you could look at the chart on the --</p> <p>21 at the end, the last two columns where it says,</p> <p>22 "Competitive AWP" and "Abbott AWP." Do you see that?</p>

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<p style="text-align: right;">262</p> <p>1 A. I do.</p> <p>2 Q. Okay, that's a comparison of AWP's, okay?</p> <p>3 A. Okay.</p> <p>4 MS. CITERA: Objection to the commentary.</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. We have heard -- well, I'm just trying to</p> <p>7 educate the witness on the testimony that we've</p> <p>8 received on this.</p> <p>9 MR. ANDERSON: Ask him, ask him.</p> <p>10</p> <p>11 BY MS. ST. PETER-GRIFFITH::</p> <p>12 Q. Sir, do you understand what the two</p> <p>13 columns reflect?</p> <p>14 A. I understand --</p> <p>15 MS. CITERA: Objection to form.</p> <p>16 THE WITNESS: I -- based on the label of the</p> <p>17 column on the top right, "Abbott AWP," I would assume</p> <p>18 that those are Abbott's AWP prices.</p> <p>19 "Abbott's AWP -- Competitive AWP," I</p> <p>20 wouldn't know whose that was.</p> <p>21</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>	<p style="text-align: right;">264</p> <p>1 to an Abbott customer, would this violate the</p> <p>2 practice?</p> <p>3 MS. CITERA: Objection to the form, outside the</p> <p>4 scope.</p> <p>5 THE WITNESS: I don't know what the</p> <p>6 circumstances were.</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Did you do anything to investigate what</p> <p>9 the circumstances were?</p> <p>10 A. Until you showed me this document two</p> <p>11 minutes ago, I wasn't aware of its existence.</p> <p>12 Q. Okay, would it violate the practice?</p> <p>13 MS. CITERA: Objection to the form, outside the</p> <p>14 scope.</p> <p>15 THE WITNESS: I could state what the practice</p> <p>16 is and the practice was, which was not to provide AWP</p> <p>17 information to customers.</p> <p>18</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. So if this AWP information was provided to</p> <p>21 customers, it would contravene that practice, right?</p> <p>22 MS. CITERA: Objection to form, outside the</p>
<p style="text-align: right;">263</p> <p>1 Q. Sir, we have received testimony in this</p> <p>2 case that this is a Olsten Kimberly Quality Care</p> <p>3 proposal analyses, meaning this was prepared by Abbott</p> <p>4 and presented to Olsten Kimberly in the context of</p> <p>5 preparing for negotiations on a contract.</p> <p>6 A. Okay.</p> <p>7 Q. Does the provision of this information</p> <p>8 concerning competitive AWP's and Abbott AWP's violate</p> <p>9 the practice that you described before?</p> <p>10 MS. CITERA: Objection to the form, outside the</p> <p>11 scope.</p> <p>12 MS. ST. PETER-GRIFFITH: It's not outside the</p> <p>13 scope.</p> <p>14 MS. CITERA: Again, to the extent you're asking</p> <p>15 what violates and what's legal or illegal, proper and</p> <p>16 improper, it's outside the scope.</p> <p>17 THE WITNESS: I can state what the practice</p> <p>18 was, which was not to provide AWP information to</p> <p>19 customers.</p> <p>20</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. Okay, well, this -- if this was provided</p>	<p style="text-align: right;">265</p> <p>1 scope.</p> <p>2 THE WITNESS: Again, you're -- there's no other</p> <p>3 facts in evidence. I don't know the circumstances of</p> <p>4 how this was prepared and who prepared it and why they</p> <p>5 prepared it.</p> <p>6</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Okay, if the testimony is that that was</p> <p>9 prepared and presented to a customer --</p> <p>10 A. Okay.</p> <p>11 Q. -- would that violate the practice, sir?</p> <p>12 MS. CITERA: Objection to the form, outside the</p> <p>13 scope.</p> <p>14 THE WITNESS: You're asking for a conclusion</p> <p>15 of that violation.</p> <p>16</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. No, I'm asking about -- you've testified</p> <p>19 at length that Abbott had this practice. I want to</p> <p>20 know whether or not the provision of this information</p> <p>21 to a customer violates that practice?</p> <p>22 MS. CITERA: Objection to the form, outside the</p>

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<p style="text-align: right;">266</p> <p>1 scope.</p> <p>2 THE WITNESS: I think I -- same answer.</p> <p>3</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. Is that a "yes"?</p> <p>6 A. About -- no, violation is -- you're asking</p> <p>7 for a con -- a legal conclusion.</p> <p>8 Q. I'm not asking for a legal conclusion.</p> <p>9 I'm asking -- I mean it's -- well, let me ask you</p> <p>10 this. What is the predicate for Abbott's practice?</p> <p>11 MS. CITERA: Objection to the form.</p> <p>12 THE WITNESS: It's the manner in which they</p> <p>13 decided how to do business.</p> <p>14</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. Okay, so it's an Abbott business decision?</p> <p>17 A. To not pro -- business practice not to</p> <p>18 provide AWP.</p> <p>19 Q. Okay. Did this -- did this partic -- did</p> <p>20 the provision of this information violate that Abbott</p> <p>21 business practice?</p> <p>22 MS. CITERA: Objection to the form, outside the</p>	<p style="text-align: right;">268</p> <p>1 MS. ST. PETER-GRIFFITH: Yeah, I was going to</p> <p>2 say that. This is -- sir, I'm representing to you</p> <p>3 that Exhibit 6 in your deposition --</p> <p>4 MS. CITERA: Exhibit 4.</p> <p>5 MS. ST. PETER-GRIFFITH: Oh, I'm sorry.</p> <p>6 THE WITNESS: Exhibit 4.</p> <p>7</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. (Continuing) -- Exhibit 4 in your</p> <p>10 deposition is the -- was previously marked as an</p> <p>11 exhibit in the Kipperman deposition as 493. And you</p> <p>12 see the exhibit sticker at the bottom?</p> <p>13 A. I do.</p> <p>14 Q. Sir, if you could look over to the</p> <p>15 columns, and just before the black line --</p> <p>16 A. Yes.</p> <p>17 Q. -- there's information that says, "AWP</p> <p>18 from Red Book June '96"?</p> <p>19 A. Yes.</p> <p>20 Q. Would the provision of this information to</p> <p>21 a customer -- in this case, it's Chartwell -- be</p> <p>22 consistent with Abbott's practice prohibiting the</p>
<p style="text-align: right;">267</p> <p>1 scope.</p> <p>2 THE WITNESS: I'm having a problem with the</p> <p>3 word "violate."</p> <p>4</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. Was it consistent with Abbott's business</p> <p>7 practice to provide this information to a customer?</p> <p>8 A. On its face --</p> <p>9 MS. CITERA: Objection to form.</p> <p>10 THE WITNESS: -- I -- I'd say it's not</p> <p>11 consistent.</p> <p>12</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. The next one, I'm sorry, has at the bottom</p> <p>15 493. Sir, I'm going to represent to you that</p> <p>16 Exhibit 6 --</p> <p>17 A. I'm sorry, which page?</p> <p>18 Q. Oh, I'm sorry, just start at -- sorry, I</p> <p>19 haven't flipped to a page yet.</p> <p>20 A. Oh, okay.</p> <p>21 MR. ANDERSON: What exhibit number is it?</p> <p>22 THE WITNESS: 493, witness Kipperman 397.</p>	<p style="text-align: right;">269</p> <p>1 provision of AWP or spread information to Abbott</p> <p>2 clients?</p> <p>3 MS. CITERA: Objection to the form, outside the</p> <p>4 scope.</p> <p>5 THE WITNESS: On its face, this -- knowing no</p> <p>6 other information, this would not be inconsistent.</p> <p>7 MS. ST. PETER-GRIFFITH: If you could mark this</p> <p>8 as Exhibit 6, please.</p> <p>9 Exhibit Fishman 006 was</p> <p>10 marked for ID)</p> <p>11</p> <p>12 BY MS. ST. PETER-GRIFFITH::</p> <p>13 Q. Sir, Exhibit 6 was previously marked as</p> <p>14 Exhibit 364 to the Mike Sellers deposition. Do you</p> <p>15 see that?</p> <p>16 A. I do.</p> <p>17 Q. And I'll represent to you that this is a</p> <p>18 proposal analyses prepared for Chartwell Home</p> <p>19 Therapies. And do you see on the first page where it</p> <p>20 says "Exhibit F," there is a column that's a double</p> <p>21 column entitled "AWP Spread"? Do you see that?</p> <p>22 A. I do see that.</p>

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<p style="text-align: right;">270</p> <p>1 Q. Would the provision of this AWP spread</p> <p>2 information to Abbott's client --</p> <p>3 A. Customer.</p> <p>4 Q. -- or customer, Chartwell, be consistent</p> <p>5 with the practice that Abbott had from '91 through</p> <p>6 2001 prohibiting the provision of AWP or spread</p> <p>7 information to customers?</p> <p>8 MS. CITERA: Objection to the form, outside the</p> <p>9 scope.</p> <p>10 THE WITNESS: Assuming -- assuming those facts</p> <p>11 and knowing no others, it would not be consistent.</p> <p>12</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. Did Mr. Sellers happen to tell you about</p> <p>15 this --</p> <p>16 A. This one?</p> <p>17 Q. -- proposal analyses?</p> <p>18 A. No, he did not.</p> <p>19 Q. Okay. Sir, did Abbott ever take any</p> <p>20 disciplinary action against anyone for violating the</p> <p>21 practice against providing AWP or spread information</p> <p>22 to customers?</p>	<p style="text-align: right;">272</p> <p>1 learn information or research information concerning</p> <p>2 computer information including AWP information</p> <p>3 provided by Abbott HPD or specifically Alt Site and</p> <p>4 Home Infusion to Abbott customers?</p> <p>5 A. I don't --</p> <p>6 MS. CITERA: Ever or in preparation for this</p> <p>7 deposition?</p> <p>8 MS. ST. PETER-GRIFFITH: Well --</p> <p>9 MR. ANDERSON: Both.</p> <p>10 MS. ST. PETER-GRIFFITH: I mean both, yeah.</p> <p>11 THE WITNESS: All right, the answer would be --</p> <p>12 MS. CITERA: Objection to form.</p> <p>13 THE WITNESS: Okay, the answer would be the</p> <p>14 same for both. I'm not aware of any computer --</p> <p>15 computerized information regarding this subject</p> <p>16 matter.</p> <p>17</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Are you familiar with the CHIP system?</p> <p>20 A. No.</p> <p>21 Q. If Abbott had a proprietary computer</p> <p>22 program called the CHIP system --</p>
<p style="text-align: right;">271</p> <p>1 A. I don't know.</p> <p>2 MS. CITERA: Objection to form, outside the</p> <p>3 scope.</p> <p>4 THE WITNESS: Sorry.</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. What -- do you want to take a break?</p> <p>7 A. Can we take a break? Yeah.</p> <p>8 Q. Sure, that's fine.</p> <p>9 A. I waited about as long as I could.</p> <p>10 THE VIDEOGRAPHER: Going off the record at</p> <p>11 2:34 p.m.</p> <p>12 (Recess taken.)</p> <p>13 THE VIDEOGRAPHER: Beginning Videotape No. 5 in</p> <p>14 the deposition of Mr. Fishman. We're back on the</p> <p>15 record at 2:53 p.m.</p> <p>16</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. Mr. Fishman --</p> <p>19 A. Yes.</p> <p>20 Q. -- we -- before the break, we looked at</p> <p>21 some documents, and I want to ask you whether</p> <p>22 anyone -- whether you've ever had an opportunity to</p>	<p style="text-align: right;">273</p> <p>1 A. Okay.</p> <p>2 Q. -- that Abbott customers could license</p> <p>3 that provided to Abbott customers, among other</p> <p>4 information, AWP information, would that violate or</p> <p>5 would that be consistent with the practice at Abbott</p> <p>6 concerning the non-provision of AWP and spread</p> <p>7 information to customers?</p> <p>8 MS. CITERA: Objection to the form, outside the</p> <p>9 scope.</p> <p>10 THE WITNESS: I -- it seems to me there's more</p> <p>11 facts I need regarding how this computer -- how this</p> <p>12 software program worked. Was the information loaded</p> <p>13 onto the software program?</p> <p>14</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. Loaded on by who?</p> <p>17 A. I don't know. I don't under -- I don't</p> <p>18 understand the nature of this software program.</p> <p>19 Q. Okay, Abbott licensed the software program</p> <p>20 to its customers, and based -- and on the software</p> <p>21 program or from the software program, Abbott's</p> <p>22 customers could obtain AWP information concerning</p>

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March 20, 2008

Chicago, IL

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----x
In re: PHARMACEUTICAL INDUSTRY) MDL DOCKET NO.
)
AVERAGE WHOLESALE PRICE) CIVIL ACTION
)
LITIGATION.) 01CV12257-PBS
----- x

VOLUME II

The videotaped 30(b)(6) deposition of ABBOTT (DAVID FISHMAN), called by the United States for examination, taken pursuant to subpoena and pursuant to the Federal Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Rachel F. Gard, Certified Shorthand Reporter, at 77 West Wacker Drive, Suite 3500, Chicago, Illinois, commencing at 8:35 a.m. on the 20th day of March, A.D., 2008.

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Chicago, IL

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363	<p>1 APPEARANCES:</p> <p>2</p> <p>3 U.S. DEPARTMENT OF JUSTICE</p> <p>4 CIVIL DIVISION</p> <p>5 MS. ANN ST. PETER-GRIFFITH</p> <p>6 99 N.E. 4th Street</p> <p>7 Miami, Florida 33132</p> <p>8 Phone: (305) 961-9003</p> <p>9 Email: ann.st.peter-griffith@usdoj.gov</p> <p>10 On behalf of the United States;</p> <p>11</p> <p>12 ANDERSON, LLC</p> <p>13 MR. C. JARRETT ANDERSON</p> <p>14 208 West 14th Street</p> <p>15 Suite 3-B</p> <p>16 Austin, Texas 78701</p> <p>17 Phone: (512) 469-9191</p> <p>18 Email: jarrett@anderson-llc.com</p> <p>19 On behalf of the Relator Ven-A-Care of the</p> <p>20 Florida Keys, Inc.;</p> <p>21</p> <p>22</p>	365	<p>1 INDEX</p> <p>2 WITNESS PAGE</p> <p>3 DAVID FISHMAN</p> <p>4 Examination by Ms. St. Peter-Griffith 370</p> <p>5 Examination by Mr. Anderson 676</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 FISHMAN EXHIBIT PAGE</p> <p>9 Exhibit Fishman 008 ABT-DOJ 0395435 - ABT-DOJ</p> <p>10 0395586 370</p> <p>11 Exhibit Fishman 009 Additional Abbott-produced</p> <p>12 compliance documents with</p> <p>13 no Bates numbers 372</p> <p>14 Exhibit Fishman 010 ABT-DOJ 0397104 - ABT-DOJ</p> <p>15 0397214 and ABT-DOJ</p> <p>16 0398240 - ABT-DOJ 0398285 374</p> <p>17 Exhibit Fishman 011 Letter to Abbott from the</p> <p>18 United States Department</p> <p>19 of Justice dated September</p> <p>20 30, 1999 444</p> <p>21 Exhibit Fishman 012 AR 00887 - AR 01013 487</p> <p>22 Exhibit Fishman 013 ABT-DOJ 316016 552</p>
364	<p>1 JONES DAY</p> <p>2 MS. TONI-ANN CITERA</p> <p>3 222 East 41st Street</p> <p>4 New York, New York 10017</p> <p>5 Phone: (212) 326-3939</p> <p>6 Email: tcitera@jonesday.com</p> <p>7 On behalf of Abbott Laboratories and the</p> <p>8 deponent.</p> <p>9</p> <p>10</p> <p>11 ALSO PRESENT: Stephan Hoog</p> <p>12 (Legal Visual Services)</p> <p>13</p> <p>14</p> <p>15 * * * * *</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	366	<p>1 EXHIBITS</p> <p>2 FISHMAN EXHIBIT PAGE</p> <p>3 Exhibit Fishman 014 ABT-DOJ 351271 - ABT-DOJ</p> <p>4 351270 570</p> <p>5 Exhibit Fishman 015 ABT-DOJ 335485 - ABT-DOJ</p> <p>6 335487 585</p> <p>7 Exhibit Fishman 016 ABT-DOJ 307075 595</p> <p>8 Exhibit Fishman 017 Document retained by</p> <p>9 Ms. Citera based on</p> <p>10 privilege 599</p> <p>11 Exhibit Fishman 018 ABT-DOJ 340984 - ABT-DOJ</p> <p>12 340985 601</p> <p>13 Exhibit Fishman 019 ABT-DOJ 340986 - ABT-DOJ</p> <p>14 340987 606</p> <p>15</p> <p>16 CERTIFIED QUESTION</p> <p>17 QUESTION PAGE</p> <p>18</p> <p>19 Q. Okay. Outside of the kind</p> <p>20 of big-sky picture that Abbott</p> <p>21 complies with laws, does</p> <p>22 Abbott have a position on</p>

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<p style="text-align: right;">379</p> <p>1 with the type of information that is contained in</p> <p>2 many of the -- or if not most of the presentations</p> <p>3 that have already been produced.</p> <p>4 Q. Was there anything -- is there anything</p> <p>5 unique about fraud and abuse compliance with regard</p> <p>6 to Home Infusion given their slightly different</p> <p>7 business model than, say, the rest of Abbott or</p> <p>8 HPD?</p> <p>9 A. No, we --</p> <p>10 MS. CITERA: Objection to form.</p> <p>11 BY THE WITNESS:</p> <p>12 A. We gave fraud and abuse presentations to</p> <p>13 many of the businesses, including Home Infusion.</p> <p>14 Q. Okay. But my question is, are there --</p> <p>15 given Home Infusion's business model, were there</p> <p>16 additional fraud and abuse issues that perhaps</p> <p>17 touched upon them that might not be applicable for,</p> <p>18 you know, HBS's DRG reimbursement model or even Alt</p> <p>19 Site's?</p> <p>20 A. They would be --</p> <p>21 MS. CITERA: Objection to form.</p> <p>22 THE WITNESS: Sorry.</p>	<p style="text-align: right;">381</p> <p>1 Q. In your sort of additional research for</p> <p>2 today's deposition, nobody told you that Abbott's</p> <p>3 reimbursement department submitted claims on behalf</p> <p>4 of Abbott's pharmacies?</p> <p>5 A. No.</p> <p>6 Q. Did anyone tell you that Abbott's</p> <p>7 pharmacies -- well, actually Abbott itself had a</p> <p>8 provider number with -- or provider numbers with</p> <p>9 Medicaid and Medicare for purposes of submitting</p> <p>10 claims on behalf of its pharmacies?</p> <p>11 MS. CITERA: Objection to the form, outside</p> <p>12 the scope.</p> <p>13 BY THE WITNESS:</p> <p>14 A. I'm not aware of that.</p> <p>15 Q. Do you think if Abbott -- or is it</p> <p>16 Abbott's position if it did submit claims to</p> <p>17 Medicaid and Medicare on its own behalf, that that</p> <p>18 would create a situation where they would need to</p> <p>19 have heightened scrutiny on Medicaid and Medicare</p> <p>20 fraud and abuse?</p> <p>21 MS. CITERA: Objection to the form, outside</p> <p>22 the scope.</p>
<p style="text-align: right;">380</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Go ahead.</p> <p>3 A. They would be -- they would be -- Their</p> <p>4 business model and activities would be subject to</p> <p>5 the same compliance regulations and rules and laws</p> <p>6 that all the other businesses would be subject to.</p> <p>7 Q. Would the fact that Abbott's Home</p> <p>8 Infusion business unit actually submitted claims,</p> <p>9 either on behalf of Abbott's pharmacies or on</p> <p>10 behalf of customers or consignment partners, would</p> <p>11 that fact necessitate a need to look at additional</p> <p>12 compliance measures?</p> <p>13 MS. CITERA: Objection to the form.</p> <p>14 BY THE WITNESS:</p> <p>15 A. As I stated last time, I was not and am</p> <p>16 not aware that Abbott submitted reimbursement</p> <p>17 claims in its own name for itself. I'm aware that</p> <p>18 as part of the services it provided to certain Home</p> <p>19 Infusion customers, it would have -- it would have</p> <p>20 done billing. It would have compiled billing</p> <p>21 information and submitted it on behalf of</p> <p>22 customers.</p>	<p style="text-align: right;">382</p> <p>1 BY THE WITNESS:</p> <p>2 A. To the extent they filed claims for --</p> <p>3 under its own provider number and in its own name,</p> <p>4 they would have to comply with the regulations in</p> <p>5 the -- to the same extent they would comply with</p> <p>6 regulations as a service provider or product</p> <p>7 provider.</p> <p>8 Q. For their consignment partners?</p> <p>9 A. For their consignment partners or any of</p> <p>10 their businesses, quite frankly.</p> <p>11 Q. Okay. Did you discuss anything else with</p> <p>12 Mr. Taylor?</p> <p>13 A. I did not.</p> <p>14 Q. What about Mr. Matea?</p> <p>15 A. With Mr. Matea, I had a phone</p> <p>16 conversation that was less than five minutes. And</p> <p>17 he confirmed my testimony the first -- on last</p> <p>18 Wednesday. I speculated or assumed that in the</p> <p>19 composition of the business conduct committee, that</p> <p>20 Rick Gonzalez, in his capacity as president of</p> <p>21 Abbott, was, in fact, on the business conduct</p> <p>22 committee but, in fact, as I suggested in that</p>

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